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SUBJECT: JUSTICE REFORM SEASON OPENS

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ACCORDINGLY.

¶1. (SBU) Summary: Proposed constitutional changes that briefly became the focus of criticism by human rights lawyers last week are the first step in a protracted effort by the GOM to modernize the administration of justice in Mexico by granting police and prosecutors greater authority and a wider array of tools to investigate and prosecute serious crimes) particularly organized criminal activities.

¶2. (SBU) Some human rights lawyers believe the changes will allow prosecutors excessive discretion in pursuing such investigations; several of the proposals in fact offer prosecutors greater independence from judicial oversight in using such tools as house arrest (&arraigo), search warrants, wiretaps and interceptions of private correspondence. GOM contacts argue, however, that the changes are overdue, much-needed in light of Mexico's security situation, will strengthen the rights and protections for victims and accused alike and preserve appropriate judicial oversight. While there is broad consensus here that reforms are vital, there are several proposals being floated during the current legislative session, and the outcome of the reform effort remains uncertain. End Summary

Harsh Criticism Leveled During Citizens Forum

¶3. (SBU) The GOM proposal, presented to the Senate in March, became the focus of brief debate on September 4 at a Citizen,s Forum on Security and Democracy widely attended by academics, legal specialists and legislators. At the forum, the president of the Inter-American Human Rights Court, Sergio Garcia Ramirez, charged that the government was seeking to create a dual penal system to differentiate ordinary criminals from what he called &enemies of the state.8 Alluding to rumors the government was contemplating a separate court system to try organized crime cases, Garcia Ramirez, (a long time PRIista and former Attorney General under Miguel de la Madrid) lamented the &Guantanamoization8 of Mexican justice.

¶4. (SBU) The proposal, however, does not contemplate creation of new institutions. Embassy officers looked at the package sent to the Mexican congress and discussed it with contacts in the Attorney General,s office and SSP. The initiative is ambitious and offers up a large number of changes to key elements of Mexico,s constitution that will provide the basis for the eventual move from a mixed/inquisitorial to an adversarial system of justice.

15. (SBU) The core elements, however, are designed to make the current system more efficient in the near term and give police and prosecutors additional tools to pursue major criminal cases. Among them:

1A. Giving police investigative powers to independently develop criminal cases. Federal police currently have no such authority, and must pursue investigations under the strict supervision of the Attorney General's office. The reforms would allow law enforcement agencies to function more closely along the lines of their U.S. counterparts, with police initially developing cases independently before turning them over to public prosecutors to pursue in the courts.

1B. Granting judges and prosecutors additional powers to issue &injunctive8 or provisional measures in an investigation to preserve the integrity and continuation of the proceedings, protect victims, rights, and preserve the public interest. Such measures would include a fixed period (30 or 60 days) of house arrest (&arraigo8) of suspects to allow the prosecution time to prepare complex cases for presentation to the court. In organized crime (major narcotics trafficking) cases, prosecutors would be allowed to issue the house arrest orders, with subsequent judicial review. Currently, arraigos are utilized in organized crime cases only with prior judicial approval. Under the proposed changes, arraigos also would be allowed for other serious crimes when issued by a judge only. Also, in organized crimes cases only, prosecutors would be authorized, based on exigent circumstances, to issue search and seizure warrants, including wiretap orders, without prior judicial

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authorization. Again, however, such actions would be subject to subsequent judicial review. Finally, to protect witnesses and informants in organized crime cases, judges could order that their names and personal data be kept confidential.

1C. Establishing an array of victims, rights, including the right to interface with police and prosecutors in the investigation of a case, the right to seek restitution in a timely manner, and the right to avoid testifying in the direct presence of the accused in certain criminal cases such as rape and kidnap.

1D. Ensuring defendants right to adequate representation.

1E. Calling on legislators to better differentiate between misdemeanors and &minor8 and "major8 felonies, to reduce the number of defendants in pre-trial custody. For example, certain non-violent white collar offenses would be removed from the list of non-bailable offenses, and a large number of lesser offenses would be subject to summons or subpoena to appear in court rather than arrest warrant. To relieve over-crowded dockets, the package also calls for abbreviated trials, guilty pleas, alternative dispute resolution mechanisms, and greater discretion to prosecutors to dispose of cases that do not merit prosecution.

1F. Establishing civil-like asset forfeiture along the lines of Colombia's law on extinguishing property rights (&extincion de dominio8), while respecting the property rights of innocent parties. The current law allows only for forfeiture following a criminal conviction or abandonment, and seized assets often sit for years awaiting final judgment, losing value through neglect and deterioration.

1G. Authorizing the federal legislature to pass criminal, criminal procedure, and sentencing codes with nationwide application to ensure uniformity and fairness in the application of the criminal laws.

¶H. Providing for removal of police and prosecutors for corruption and other misconduct, as well as establishing guidelines regulating use of confessions to prevent police abuse and shoring up their use as evidence

Due Process Concerns

¶6. (SBU) Some civil society representatives here lament what they consider the government's narrow focus on granting police and prosecutors broader powers to combat organized crime, saying a more comprehensive overhaul of Mexican administration of justice is needed. They also worry about the lack of judicial oversight in the use of new investigative tools. One human rights lawyer we contacted said the proposals would allow the police and prosecutors the right to hold anybody in custody without requesting a warrant from a judge, solely on the suspicion that he has something to do with organized crime.⁸ The lawyer complained that the definition of organized crime in Mexico remains vague and subject to political manipulation. (Comment: The Mexican Organized Crime Law expressly defines a short list of crimes and corresponding articles of the penal code that may constitute organized criminal activity. In practice, the vast majority of organized crime cases involve the activities of major narcotics trafficking cartels.) Other rights activists have reacted to rumors the GOM was contemplating a special, possibly secret, court system, to try organized crime suspects.

Countered by GOM contacts

¶7. (SBU) SSP and PGR officials with whom Embassy officers spoke flatly denied that the GOM is contemplating special courts. The proposal under consideration offers no such alternative system. Our contacts acknowledge, however, that the GOM is examining designating a limited number of regular federal district judges, possibly in the capital city, to hear organized crime cases in the existing court system. The object is to make it easier provide for the security for those judges and better insulate them from intimidation and undue influence. Such specialized courts are used in many countries, including the U.S, and have proven their worth by improving the administration of justice through the greater focus and level of expertise they bring to highly complex prosecutions.

¶8. (SBU) As for increased prosecutorial powers, Mexican government officials have stressed their limited application

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to organized crime cases and argue that they are necessary to effectively prosecute drug cartel members who flaunt and manipulate the current system. Such officials also point to the fact that the new powers are subject to subsequent judicial review. To the GOM, the proposed changes strike a balance between judicial oversight and the need to pursue time-sensitive investigations quickly and efficiently in major cases.

¶9. (SBU) Comment: These points and others are likely to be debated in coming weeks, once the legislature disposes of the more immediate issues of fiscal and electoral reform. At the citizens forum a multiparty panel of Senators agreed that penal reform was vital and promised to begin fashioning a comprehensive package by November. The trouble is, there are a number of extremely ambitious initiatives currently being floated, which bear little resemblance to the GOM proposal. Our PGR contacts worry these will bog the reform effort down in a lengthy debate over priorities at a time when prosecutors need additional authorities to more aggressively combat narco-crime. End comment.

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